

Decision 02-11-069 November 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wild Goose Storage, Inc. to
Amend its Certificate of Public Convenience and
Necessity to Expand and Construct Facilities for
Gas Storage Operation.

Application 01-06-029
(Filed June 18, 2001)

**OPINION ON REQUEST FOR
INTERVENOR COMPENSATION**

This decision grants The Utility Reform Network (TURN) \$13,634.96 in compensation for its substantial contribution to Decision (D.) 02-07-036, which approved, with conditions, the request of Wild Goose Storage, Inc. (Wild Goose) for authority to expand its gas storage facilities.

1. Background

In D.02-07-036, the Commission amended Wild Goose's certificate of public convenience and necessity and authorized, with conditions, a 15 billion cubic feet expansion of the Wild Goose storage facilities in Butte County and the development of a second interconnection with the Pacific Gas and Electric Company (PG&E) system. The new interconnection will provide the Wild Goose expansion facilities with access to PG&E's major transmission pipeline, known as Line 400/401 or the PG&E "backbone."

Though no party opposed the expansion per se, several parties, including TURN, opposed other aspects of the application, such as Wild Goose's proposed "equivalent service" standard. Imposition of this so-called design standard would have required PG&E to expand its backbone transmission capacity to

ensure maximum deliverability from all gas storage facilities at all times. Resolution of this issue turned on correct interpretation of the nondiscrimination provisions in the Commission's Gas Storage Rules.¹ So did resolution of another contentious issue, how to allocate "as-available" capacity among all transportation customers (including those withdrawing gas from independent storage) should constraints occur.

TURN filed this request for compensation on September 23, 2002.

No party has opposed TURN's request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. TURN has complied with the NOI requirements. The September 26, 2001 ruling of Administrative Law Judge (ALJ) Prestidge found that TURN was eligible to file for an award of intervenor compensation in this proceeding.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

¹ The Gas Storage Rules were adopted in D.93-02-013. (See the *Gas Storage Decision*, D.93-02-013, 1993 Cal. PUC LEXIS 66.)

in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolutions of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In this proceeding, TURN weighed in on three major issues, two of which were inter-related. TURN presented its position through cross-examination of select Wild Goose witnesses and on brief, and also filed comments on specific portions of the draft decision.

On the inter-related issues, TURN opposed Wild Goose's contention that

the Gas Storage Rules imply an equivalent service standard and argued, moreover, that expansion of PG&E's backbone should be considered in a generic proceeding. The Commission agreed that the Gas Storage Rules neither mandate, nor require the adoption of, an equivalent service standard and rejected this aspect of the Wild Goose application. The Commission also declined to engage in a detailed review of Wild Goose's proposals for cost allocation of a future backbone expansion. The Commission stated "we agree with TURN and ORA [Office of Ratepayer Advocates] that the complexity of these issues requires a focused but more generic inquiry than that presented by the proposed expansion of a single, independent storage provider. We also perceive, based on the evidence in this proceeding, that these issues may not be ripe for further review at present." (D.02-07-036, p. 35, *mimeo*.)

On the third issue, how to allocate as-available transportation capacity if an apportionment should become necessary (sometimes referred to as "service priority"), TURN opposed Wild Goose's contention that gas storage customers stood first in line. TURN generally supported the contention of PG&E that gas storage customers should be last in any queue. However, TURN recognized that this position likely required amendment of the Gas Storage Rules to differentiate the treatment of storage facilities based on location—and furthermore, that any such revisions should be considered in a generic proceeding. The Commission rejected both the Wild Goose and PG&E proposals and adopted a different result, pro rata allocation of as available capacity among all transportation customers. The Commission agreed that Wild Goose's position was inconsistent with the Gas Storage Rules. With respect to amendment of the Gas Storage Rules to tie service priority to locational differences among storage sites, the Commission stated "we have insufficient information on this record to determine

whether that result would be good public policy.” (*Id.* at 32.) Recognizing that it only partially prevailed on this issue, TURN has reduced by 50% the time its attorney spent on this issue.

Though TURN’s positions overlapped to some extent with certain positions advanced by ORA, we conclude that TURN’s compensation request should not be reduced for duplication. TURN focused its participation in this proceeding, and where overlap with ORA occurred, TURN’s participation was supplemental and resulted in the development of a more comprehensive record, and a more useful one.

The benefit to core customers of TURN’s participation is difficult to quantify, since the major issues in this proceeding concerned Commission policy on independent gas storage. TURN’s participation helped to ensure that core customers were not detrimentally affected by the outcome of this proceeding. Most particularly, our decision did not endorse Wild Goose’s equivalent service standard and did not even reach the issue of the cost allocation for a future backbone expansion – thus, our decision reached the result TURN recommended. This result benefited core ratepayers because Wild Goose estimated that one proposal for implementing its equivalent service standard would require a backbone expansion of \$37.5 million.

Clearly, this proceeding raised issues that had significant financial implications for the residential and small commercial customers, the ratepayers whom TURN represents. We conclude that TURN substantially contributed to D.02-07-036 and thereby benefited those ratepayers.

4. Reasonableness of Requested Compensation

Though TURN’s NOI estimated the costs of its participation at \$32,850, TURN’s request seeks only \$13,637.38. This amount represents, on average, 83%

of TURN's attorneys' time, or \$12,648.97 (i.e., TURN has voluntarily discounted by 50% attorney time spent on the service priority issue), and all of TURN's direct expenses, in the amount of \$988.41. As discussed below, we find that due to a minor computational error, the correct total for the attorneys' time claimed is \$12,646.55, which reduces the total compensation claim to \$13,634.96.

4.1 Hours Claimed

Table 1 of the request summarizes the time spent on this proceeding by TURN's attorneys Marcel Hawiger and Michel Florio. Hawiger claims 19.71 hours billed at \$190 per hour in 2001 and 42.41 hours billed at \$200 per hour in 2002. Florio claims 1.09 hours billed at \$385 per hour in 2002. TURN has reduced its attorneys' hours to account for the service priority issue on which it did not wholly prevail, and consistent with Commission policy, TURN has billed only one-half of the hours related to compensation activities.

TURN has included its attorneys' hourly records in an appendix to the request for compensation. The information reflects the hours devoted to reviewing the pleadings and prepared testimony of other parties, preparing for and participating in evidentiary hearing, and preparing briefs.

In sum, we find that the hours TURN claims are reasonable and consistent with TURN's participation in this proceeding.

4.2 Hourly Rates

The Commission has previously adopted the hourly rates that TURN requests in this proceeding. For Hawiger, D.01-10-008 adopted an hourly rate of \$190 for 2001, and D.02-06-023 adopted an hourly rate of \$200 for 2002. For Florio, D.02-06-070 adopted an hourly rate of \$350 for 2001, and D.02-06-023 adopted an hourly rate of \$385 for 2002. Those rates are reasonable for work

done within the same time periods in this proceeding.

Due to a minor computational error, the application of these rates to the allowed hours results in slightly different amounts than TURN shows in Table 1. Hawiger's hours actually total \$12,226.90 (rather than \$12,227.88), Florio's hours total \$419.65 (rather than \$421.09), and the combined total is \$12,646.55 (rather than \$12,648.97).

4.3 Other Costs

Other costs claimed include photocopying expense of \$666.00, postage costs of \$67.41 and LEXIS NEXIS service charges of \$255.00, totaling \$988.41. These sums appear to be reasonable, considering the circumstances of this case, and should be reimbursed.

5. Award

We award TURN \$13,634.96 for its substantial contribution to D.02-07-036. The award includes: \$12,226.90 for Hawiger (19.71 hours billed at \$190 per hour in 2001 (or \$3,744.90)) and 42.41 hours billed at \$200 per hour in 2002 (or \$8,482.00); \$419.64 for Florio (1.09 hours billed at \$385 an hour in 2002); and \$988.41 in other costs.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed this compensation request (*i.e.*, December 7, 2002) and continuing until Wild Goose makes full payment of the award.

6. Waiver of Comment Period

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise

applicable 30-day review and comment period is being waived.

7. Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN timely requests compensation for substantial contribution to D.02-07-036 as set forth herein.
2. TURN requests hourly rates for its attorneys that have already been approved by the Commission.
3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$13,634.96 for substantial contribution to D.02-07-036 in these proceedings.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$13,634.96 as set forth herein for substantial contributions to Decision 02-07-036.

2. Wild Goose Storage, Inc. shall, within 30 days of this order, pay TURN \$13,634.96 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H.15, with interest beginning on December 7, 2002, and continuing until full payment has been made.

This order is effective today.

Dated November 21, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
MICHAEL R. PEEVEY
Commissioners

Commissioner Geoffrey F. Brown, being
necessarily absent, did not participate.

Compensation Decision Summary Information

Compensation Decision(s):	D0211069
Contribution Decision(s):	D0207036
Proceeding(s):	A0106029
Author:	ALJ Vieth
Payer(s):	Wild Goose Storage, Inc.

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network	9/23/02	\$13,637.38	\$13,634.96	Arithmetic errors

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190	2001	\$190
Marcel	Hawiger	Attorney	The Utility Reform Network	\$200	2002	\$200
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385